



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

August 14, 2013

The Honorable Jeanne Shaheen
United States Senate
Washington, DC 20510

Dear Senator Shaheen:

Thank you for your letter regarding the availability of Department of Veterans Affairs (VA) benefits to same-sex married couples. VA shares your commitment in recognizing the service and sacrifices of our Nation's Veterans and ensuring that Veterans and their families receive the care and benefits they have earned and deserve.

Certain provisions in title 38, United States Code, define "spouse" and "surviving spouse" to refer only to a person of the opposite sex. See 38 U.S.C. § 101(3) and (31). Under these provisions, a same-sex marriage recognized by a State would not confer spousal status for purposes of eligibility for VA benefits. Although the title 38 definitions of "spouse" and "surviving spouse" are similar to the Defense of Marriage Act (DOMA) provisions at issue in *United States v. Windsor*, no court has yet held the title 38 definitions to be unconstitutional.

VA and the Department of Justice are working together to assess the impact of the *Windsor* decision on the continued constitutional viability of sections 101(31) and 101(3) of title 38 and VA's obligations with respect to those remaining statutes. Challenges to the constitutionality of the title 38 definitions of "spouse" and "surviving spouse" currently are pending before Federal courts in *Cooper-Harris v. United States*, No. 12-cv-887 (C.D. Cal.); *McLaughlin v. Panetta*, No. 11-cv-11905 (D. Mass.); and *Cardona v. Shinseki*, No. 11-3083 (Vet. App.).

You also inquired about VA's ability to recognize a marriage based on its validity in the state of celebration, without regard to the laws of the state of residence. Currently, 38 U.S.C. § 103(c) provides that a marriage shall be proven valid "according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided at the time the right to benefits accrued." Nonetheless, a same-sex spouse whose marriage to a Veteran was valid in the state where the parties resided at the time they entered the marriage would not meet the definition of "spouse" under 38 U.S.C. § 101(31) for purposes of VA benefits. VA supports enactment of your bill, S. 373, the Charlie Morgan Spouses Equal Treatment Act of 2013, to remove the requirement that a Veteran's "spouse" or "surviving spouse" be a person of the opposite sex.

Should the title 38 spousal definitions be revised or determined to be unconstitutional, VA will be prepared to update its policies and systems in a timely

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manner and ensure that the delivery and quality of Veterans' benefits remain at the highest standards. Our commitment to Veterans and their families will continue to be our focus as VA implements any necessary changes to comply with applicable law and guidance.

I appreciate your continued support for our mission.

Sincerely,



Eric K. Shinseki